

**PRIVATE ADMONITION. Board Case No. 19, 2004. Effective Date: January 14, 2005.**

A Delaware lawyer was privately admonished, with conditions, for violations of the Delaware Lawyers' Rules of Professional Conduct ("Rules"). The private sanction was offered by a panel of the Preliminary Review Committee ("PRC"), and imposed with the consent of the lawyer. The lawyer admitted that he had violated the following Rules: (1) **Rule 1.3**, by failing to act with reasonable diligence and promptness in recording documents in a real estate refinancing matter; (2) **Rule 1.15(b)**, by failing promptly to deliver funds to clients and third parties, in connection with old outstanding checks and client balances in real estate matters; (3) **Rule 1.15(d)(9)(C)**, by failing to identify and correct negative balances in the firm's real estate account in a timely manner; and (4) **Rule 8.4(d)**, by engaging in conduct prejudicial to the administration of justice by filing a Certificate of Compliance in 2004 which contained inaccurate responses regarding the lawyer's processing of outstanding checks and the existence of negative balances.

This disciplinary matter commenced due to a complaint from the borrower in a real estate refinancing transaction handled by the lawyer. Prior to the refinancing, the lawyer noted the existence of a second mortgage of record for the property, and was provided with an assignment and discharge for that mortgage by the assignee-lender. Some months after the refinancing, the borrower experienced problems selling the property and it was determined that the lawyer had failed to record the assignment and discharge documents. Upon investigation, the ODC discovered that the lawyer had sent the second mortgage assignment and discharge to the Recorder of Deeds, but failed to include the moneys necessary to pay for the recording of the documents. The Recorder of Deeds returned the discharge to the lawyer's office, also noting formatting problems, and returned the assignment directly to the assignor-lender.

As a result of these complications, the borrower was unable to sell the property due to lack of clear title. The borrower then sought the lawyer's help in resolving the problem with the second mortgage. The lawyer recorded the discharge for the second mortgage with the Recorder of Deeds, but was unable to obtain the assignment because the assignee-lender asserted that the borrower had obligations relating to the refinancing which remained outstanding. The title company issuing the insurance for the prospective buyers refused to insure the property because the assignment had not been recorded.

While the refinancing issues were under investigation, the ODC also requested that the Lawyers' Fund for Client Protection ("LFCP") perform a compliance audit of the lawyer's books and records. The audit resulted in the discovery of unresolved negative balances and old outstanding checks and client balances which had not been adequately processed and resolved.

In offering the sanction of a private admonition, the PRC considered, as an aggravating

factor, the lawyer's substantial experience in the practice of law. As mitigating factors, the PRC considered: (1) the absence of a prior disciplinary record; (2) the absence of a dishonest or selfish motive with regard to the refinancing matter; (3) the lawyer's efforts to resolve the problems with the refinancing; and (4) the lawyer's remedial measures taken in connection with the firm's handling of aging client balances and outstanding checks.

The lawyer must satisfy the following conditions: (1) payment of ODC and LFCP costs; (2) for 18 months the lawyer is required to provide semi-annual reporting from a certified public accountant to the ODC verifying the lawyer's compliance with Rule 1.15; and (3) the lawyer must cooperate with the ODC, including an audit by the LFCP after one year.